ED 407 321 AUTONOMY AND SOVEREIGNTY AS THE IMPOSSIBLE ELEMENTS OF A WELL-ORDERED POLITICS.

1 OF 1

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96 9P.

DOCUMENT RESUME

ED 407 321 SO 027 204

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TITLE Autonomy and Sovereignty as the Impossible Elements of a Well-Ordered Politics.
PUB DATE 96
NOTE 9p.; Paper presented at the International Conference on Individualism and Community in a Democratic Society (Washington, DC, October 6-11, 1996).
PUB TYPE Reports - Descriptive (141) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Community; Constitutional History; *Democracy; Higher Education; Individualism
IDENTIFIERS *Political Theories

ABSTRACT

This paper questions and reevaluates the individualism (liberalism) and communitarianism debate in terms of its core concepts' language and political theory. One of the major purposes of political theory is to aim for a neutral or perhaps universal or general language of politics and forms of polity. Political theory needs to attempt to get beneath the paradigms, to see how the same concepts with different meanings change to include alternative political universes, and show how these alternatives arise from a set of fundamental choices necessary for articulating any specific form of well-ordered polity. The political argument between liberalism and communitarianism is pushed by questioning the hidden theoretical commitments through a series of six propositions. In conclusion, liberalism is not seen as being the proper opponent to communitarianism and liberty and community are seen as not necessarily being in opposition. (CB)

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International Conference on
"Individualism and Community in a Democratic Society",
Washington, D.C.

October 6-11, 1996

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AUTONOMY and SOVEREIGNTY as the IMPOSSIBLE ELEMENTS of a WELL-ORDERED POLITICS

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Sometimes smooth communication is a profoundly misleading attribute of discourse about political things. Using the same words and assembling similar sentences, speakers assume that their meaning conveys regularly and faithfully. They have gotten over the barrier of translation. Word for word, the language carries meaning.

But it is often just at this point that the greatest misconceptions are established, through the presumption of commensurateness at the more basic level of what is taken for granted, what goes without saying. This is the level of commitments to paradigm, where we model the political world as if both reason and nature have made it so. And, therefore, all right-thinking persons of good will can be expected to assume the same conditions.

The very same words, however, can attach to fundamentally different ideas and argumentative functions in the minds of those who think from the perspective alternative intellectual systems. In the foundational experience of the United States, the debates between the Antifederalists and the Federalists represent just such alternative commitments to different models of political nature and possibility -- and all of this within essentially the same historical experience. The choices between finding and making a good polity, or between recovery from the past and projection into a future, and the very question of whether political order must be refined from nature

or designed from science: these operate at the level of the paradigms of knowledge and politics which seemed to have evolved out of synchronization with each other without any acknowledgement of the disjunction. These systematic, founding differences still condition American political disagreements within the Constitution's universe.

If this observation could be apt for the constitutional theorists within one tradition, it is even more likely that the phenomenon operates today under the international acclamation of "democracy" as synonymous with all rational and good forms of polity, across much greater space and time. By our casual agreement, we may be doomed to a sort of befuddlement to which we are blind. A sort of fuzzy discord, then, may issue precisely from our consensus.

And yet one of the major purposes of political theory itself is to aim for a neutral (or perhaps universal or general) language of politics and of forms of polity. Surely, there may be problems from too much self-satisfaction in gaining a language like this, but it is certain that the goal itself is not about achieving such befuddlement and discord. So if it is to aim appropriately, political theory needs to attempt to get beneath the paradigmatic commitments, to see how the same concepts with different meanings pivot to entail alternative political universes, and perhaps even to show how these alternatives arise from a set of fundamental choices necessary to articulating any specific form of well-ordered polity.

In an endeavor to turn an upside-down world upside-down again, it is better then to encourage dispute at just this level of the taken for granted, pushing political argumentation to question the hidden pedigree of theoretical commitments.

What I write in this essay, therefore, may appear to be purposefully provocative or unsettling. It is categorical in style, in part because I want to address categorical mistakes and to reverse false dichotomies. Further deliberation will possibly produce a more muted or deft account of these things that I am presenting here. But the overall objective is to propose a kind of geometry of constitutional order, consistent with a reflective science of politics, where compelling inferences can be drawn from fundamentals and more comprehensive knowledge of public life can be re-composed from elements. The aim is both to allow more persuasive affirmative accounts of existing constitutional orders, and in the accounting to sustain a vision for what might be serious and attractive alternatives. This, ultimately, is what constitutional thought is all about.

Nearly everyone who investigates the contemporary debate about liberalism and communitarianism seems to conclude that there is something profoundly unsatisfying about it. It is often best to start with a simple observation of a puzzle like this. The problem, I propose, is that the discourse here is not well-organized theoretically; the issues themselves are not structured according to any basic strategy of political

explanation or purpose. Raucous differences of opinion stem more from category mistakes and conceptual mismatches than they do from theoretical distinctions or from alternatives in the way we would constitute civic life. There are both interpretive and constitution-making debates to be had, but their real stakes are only vaguely in evidence.

In the remainder of this essay, I will set out a series of propositions that I hope will begin to elucidate these stakes, or at least attempt to show how someone else with greater theoretical facility might go about it. There are two simple conclusions: it is nonsensical to say that liberalism is the proper opponent to communitarianism; and it is not a fact that liberty and community are in opposition. But I will not make these conclusions directly.

1. The very possibility of politicalness arises only from, first, taming two elemental theoretical states – autonomy and sovereignty – and, then, crossing the results. Neither of these wild states alone, in their pure forms, could actually be present in the world; the one would implode on itself, and the other would explode into everything.

By "autonomy," I mean absolute singularity. This entails complete separateness, utter privacy, where one has not only the capacity of self-determination (literally, giving law to oneself) but also self-making. By "sovereignty," I mean absolute collectivity (not the watered-down, metaphorical version of international-relations specialists). This involves a power of wholeness which is both comprehensive in what it encompasses and complete in what it knows. Sovereignty is not only the power to declare law but also to make and re-make the terms by which law is declared.

Autonomy and sovereignty, as elemental states, exist only in concept, as abstractions from the extreme conditions of possibility. No politics is conceivable in the full presence of either, for pure freedom and pure power leave no room for public deliberation. Politics is constituted only when these wild states are given limits. But for each element, having no limits that are not of its own instigation and possible refusal is essential to its pure character. So something serene and awesome is compromised when a valid political form comes into being.

Still, the transformation of these elements, their being domesticated and institutionalized, produces a political form which reflects them approximately – only approximately. It is precisely in the approximation (and in approximateness) that politics is founded; hence the value of moderation as the most essential political value, relic of the terms of a primordial founding. In this way, "liberalism," as the institutional representation of the self-determining individual, and "democracy," as the institutional representation of the whole people, translate the primitive elements into the realm of

complex possibility (i.e., "able to be") from the natural state of potentiality (i.e., "having full power"). As such, politics is given form.

2. As reflections of both autonomy and sovereignty, each of these theories of political form (and, while there are other variants, not every regime's claims for politicalness would be valid on this standard!) incorporates aspects of both elements but in different sequences of priority, such that liberalism becomes individual-centered and democracy becomes collective-oriented. One might note, for instance, that the pivotal term "self-government" means fundamentally different things – individual versus collective freedom – from the perspective of the (now obviously only metaphorical) liberal "autonomy" or popular "sovereignty."

Democracy, as government by the whole people, forces the constitutional problem of how to make such a regime real in the world, so that consent becomes the basis for institutionalized decisionmaking about public matters. (I should note here that majoritarianism is emphatically not equivalent to democracy. This common but theoretically inexcusable error confuses a worthy and necessary second-order approximation with the first-order approximation. It would be likewise for electoralism, as a second representation of the people already representing themselves in democratic political form.) But some private rights which may appear like those that would be associated with personal autonomy are entailed precisely because of the approximations. The rights of individuals are deployed to compensate for what is lost in the translation from the sovereignty of the people to democratic institutions; and the rights of minorities are helpful in muting the distortions that come with majoritarian decisionmaking.

In a similar way, liberalism, as government based on the dignity of the individual, also forces the need to show how public authority can be generated and sustained – however derivative it may be from the fundamental commitment to the liberty of the person or, rather, explicitly in order to protect such rights.

Nevertheless, the individual-centered value of private rights under democratic theory and the collective-oriented value of public authority under liberal theory are in either case strained and thinned, or at least highly conditioned in their secondary, derivative state. Presumably, in each case, rights and/or authority are limited in scope to the justification that produced them. Thus, for instance, the right of free speech might have a distinct character if articulated through one theoretical pedigree (self-expression) and a different character through the other (governmental criticism), or something similar, with real consequences in particular instances. This is the nature of political theory: once justified, as such, rights do not properly extend to every variant of what rights might be, and so also with authority. To conclude otherwise would be to shift back into something like the absolute elemental states again, destroying politics

itself on behalf of its epiphenomena.

3. The effect of these observations is to suggest that further crossing the political forms of liberalism and democracy as separate systems would be a wise constitutional strategy, balancing the approximations, and thereby establishing in the world an even firmer and more comprehensive representation in the elemental states of autonomy and sovereignty. In effect: a double representation of the elements, arranged in theoretical composition, with some interesting and possibly useful redundancies, or at least plural and maybe reinforcing ways of arguing for similar values. Consequently, both individual rights and collective authority could be traced back to the element that most directly sustains it. The effect would be not only to make each more securely established but also more intelligibly explainable. There would also be the effect of putting the two in a more even tension, rendering a kind of uncertainty (appropriate to the value of political moderation and compromise) that would more frequently prompt the need for interpretation.

Maintenance of this equilibrium, then, becomes one of the duties of citizenship and one of the trustee obligations of leadership. This process adds a new level of political discourse – constitutional inquiry – beyond the usual policy-making discussions of normal politics. The effect here is to replicate or rehearse, in self-reflective deliberation, the original translation of autonomy and sovereignty into political form. And thus can be achieved the politically freshening and securing consequences of a return to first principles.

4. Keeping liberal democracy as a hybrid of logics in tension, rather than attempting to synthesize the two into some fully resolved single form, creates a complex constitutional dynamic at the core of the enterprise. The result is the establishment of a theoretical framework that is open but still regulated, avoiding the effects of a closed system. And compromise at the level of normal political practices is facilitated because major principles in tension have been coordinated in the political form itself.

But this strategy does more, supplementing the more typical devices of (a) limitations arising from the way powers are defined and (b) competitiveness among institutions exercising authority. The tension between liberalism and democracy as coexistent but independently sufficient political theories supplies a third means to protect liberty and participation, at the same time that it prompts thoughtful interpretation of fundamental values in an always, as yet, unfinished plan whose evolution is spurred by its citizens' search for its meaning in times of constitutional controversy. And so its citizens become implicated in the authorship of their polity, even as they seek recourse in its interpretive possibilities to sustain their individual

freedom and collective power.

5. Behind all of these considerations, moreover, the strategy of mixing or aligning forms of polity into a theoretical system, subject to interpretation to refine its terms, reinforces the enterprise of constitutionalism itself. Here I associate constitutionalism with two propositions: (a) that polities can be composed to achieve well-ordered designs, based on what the Federalist referred to as "reflection and choice;" and (b) that orders of public life can be watched and understood as abstract plans independently of a citizen's participation within them. Constitutionalism is predicated on a politics of human intelligence – a capacity that both (a) makes and (b) knows, and seeks the science that makes each possible.

Constitutionalism, therefore, provides the occasion to incorporate individuality and collectivity into the political system in a second way, beyond establishing the specific contours of liberalism and democracy. Here, again, is a term with double and incommensurate meanings which hint at the deep theoretical commitments: "popular sovereignty." In the context of democratic theory, the term obviously refers to policies of government based on the consent of the governed. And in the context of a theory of constitution-making, the term refers to the right of the people to abolish and reconstitute their forms of polity whenever they determine that their happiness and safety require it, as John Marshall said. At the very edge of politics, and perhaps beyond, constitution-making reinvokes elemental sovereignty again. Or at least the possibility of this transformative move lies at the base of the justification for the constitutional order. Interestingly, this serves to sustain an argument about the foundations of the system rather than to destabilize it.

And at this same level of constitutionalism, elemental autonomy is also approached from within the system by the necessary freedom of each citizen to be able to imagine comprehensive alternatives to the constitutional order. Similarly to its equivalent on the side of sovereignty, this freedom is implicated indirectly as part of an account of an individual's putative assent to the Constitution. For how could a person be considered to have the capacity to endorse a constitutional order if he or she did not also have the ability to conceive of other options?

6. Individualism and communitarianism, as central themes of an account of politics, however, do not provide this rich interplay. In opposition, they are unidimensional brute forces, supplying at best a static or contrived balance of political principles, each straining to trump the other.

Why?

In part it may be because neither provides a model for a logic of how to correlate more than one of the two elemental components of politics, at best mentioning implications of the unincluded element by sufferance or as a theoretical add-on. What is lost here is not just the overlap of two forms of polity which increase the suppleness and vocabulary of authoritative political discourse. Because individualism and communitarianism separately do not reflect the two fundamental political elements, they cannot be sufficient theoretical accounts of a sustainable political regime.

More importantly, individualism and communitarianism both operate in a sort of theoretically nostalgic way – trying to directly recapture and instantiate the conceptual origins of politics as as the very form of institutionalized public life. The thrust of each of them is to revert to one of the primordial elements itself, from inside an already established polity, partaking of their absoluteness in a way that is not tempered by accommodation of the two to each other. And in particular, for both of the political themes of individualism and communitarianism, there is an avoidance of institutionalization – which, in the cases of liberalism and democracy, works out the translation of the autonomy and sovereignty into the workable domain of regular politics. There is a strong sense that the values of either individualism or communitarianism can be rendered directly – not approximately, or mediately – as infusions into human life of a single one of the primitive elements, made all the more absolute within an existing polity. Either theme poses a recursion to nature – natural singularity or natural community – or a reversion to history, which has no need for the artifice of politics, either in the making of polity or the practice of its processes. And so, politicalness itself is at issue.

Because each of these absolute themes purports to attach to the natural principle of its character directly (though perversely through the realm of an already existing politics), they each also eliminate the dimension of constitutionalism. With this is lost the capacity for abstraction in the comparison of political practices with pre-existing constitutional design, or the competition of political models articulated as formal plans separate from nature, history, or experience. Thus two of the three levels of citizenship are given up – the constitutional interpretive and the constitution-making levels.

But what is left of the third, the policy-making level?

One can be a <u>member</u> of a communitarian entity or of a civil society. One can be <u>person</u> with individual rights. One can be a <u>citizen</u> only of a polity. Citizenship is fundamentally different from both membership and personhood. What can be seen as the difference here will show what is at stake in the abandonment or the transcendence of the political in favor of either individualism or communitarianism.

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